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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

CHARLES ELLINGTON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For The Sixth Circuit

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QUESTIONS PRESENTED

I

Whether evidence is insufficient to support a conviction for mail or wire fraud when it fails to establish both the existence of a scheme to defraud and the use of the mail or a "wire" for the purpose of executing such scheme.

II

Whether the intent to defraud instruction in this mail and wire fraud prosecution was constitutionally insufficient to properly place before the jury the good faith defense raised by the accused.

III

Whether in a mail and wire fraud prosecution the given instruction must make it clear that the existence of a scheme to defraud must be established apart from any false or fraudulent representations.

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PETITION FOR WRIT OF CERTIORARI
To The United States Court of Appeals
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To The Honorable, The Chief Justice And Associate Justices Of The Supreme Court Of The United States:

The Petitioner, Charles Ellington, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, which judgment became final on September 3, 1985.

OPINION BELOW

The Opinion of the Court of Appeals (Appendix "A", infra, pp. A1-A9) is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on September 3, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

STATUTORY PROVISIONS WHICH THE CASE INVOLVES

The relevant statutory provisions involved are 18 U.S.C., §1341 and 18 U.S.C., §1343. (Text set forth in Appendix.)

STATEMENT OF THE CASE [1/]

(I)

Following a jury trial in the Southern District of Ohio (presided over

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1/ References made to a page in the transcript of proceedings in the trial court will be designated (Tr. ___).

by Judge Rice) Charles Ellington was convicted and sentenced for various violations of the Mail Fraud Statutes, 18 U.S.C. §1341 and a violation of the Wire Fraud Statute, 18 U.S.C. §1343.

On appeal from the verdicts and the judgment entered thereon, the Sixth Circuit discounted and rejected petitioner's contention that the trial court erred when he not only failed to give a separate and specific good faith instruction, but refused to do so.

In a nutshell Charles Ellington, the petitioner herein (variously referred to as either the petitioner, the defendant or Ellington), was charged and convicted of violating the law by using the mails and a wire communication to "deceive others and to obtain by false and fraudulent pretenses and representations or promises, a substantive benefit ...

from the party so deceived" (Tr. 930). The mail fraud counts, numbers 1-10, 12, 13 and 15, specifically charged Ellington with having devised "a scheme and artifice to defraud" the various individuals named in such counts of certain monies. (Id., 931.) Count 11 made a similar wire fraud charge (id., 938).

The facts were said by the Government to be that the petitioner operated a mortgage brokerage business known as Unlimited Financing Inc. And, it was said that he had falsely represented to certain named individuals that he had successfully obtained "funding for other clients, and that upon payment of a fee ... funding for their projects would be forthcoming; ... [or] that all or part of the fees paid would be refunded should the loan not be

obtained" (id., 932). The Government also contended that as a part of the alleged scheme and artifice, which was designed to defraud, resort was had to the mail service (id., 933) and in one instance (count 11) to a wire communication facility (id., 938).

In defending the charges made above, counsel for the defense sought to show that Ellington had not defrauded anyone out of anything. Rather he had merely failed to obtain various requested unconventional loans. And, that while Ellington was paid (in some instances) for his efforts, he did not engage in the criminal conduct charged in the indictment.

II

On appeal the Court conceded that the trial judge disallowed the request made for a separate and specific

instruction on the good faith issue "because he believed the defense related directly to the element of intent and that the instruction that the government must prove intent beyond a reasonable doubt was adequate to meet defendant's concerns" (Appendix "A", p. A5). Indeed the Sixth Circuit credited itself with having rejected the theory exposed in United States v. Goss, 650 F.2d 1336, 1345 (1981) by the Fifth Circuit on this issue.

Also, the Sixth Circuit further conceded the given "instructions did not ... expressly inform the jury of the defendant's theory" (ibid). The Court then added that while the trial court should have given the instruction, the failure to do so was harmless error. (Id., at A6.)

REASONS FOR GRANTING THE WRIT

In this case the Government has sought to criminalize conduct undertaken in good faith by a business man. The evidence that a "scheme" furthered by the use of the mails and wire, was clearly insufficient to support a finding of guilty beyond a reasonable doubt on any of the counts.

Indeed, the proof here shows this petitioner at all times acted in "good faith".

II

On the "good faith" defense issue, it is specifically argued that the trial judge improperly remitted the accused to arguing a defense the Court viewed as applicable without the benefit of an instruction defining such defense for the jury. This violated fundamental due process.

III

The Court's failure to make it clear in its instructions that the "scheme" referred to in the indictment was indeed an entity of sorts and required proof that it existed apart from the alleged false and fraudulent representation supposedly made for the charged purposes likewise violated due process.

ARGUMENT NO. I

Evidence Is Insufficient To Support A Conviction For Mail Or Wire Fraud When It Fails To Establish Both The Existence Of A Scheme To Defraud And The Use Of The Mail Or A "Wire" For The Purpose Of Executing Such Scheme.

At the outset there can hardly be any dispute that the crimes charged herein on

the basis of 18 U.S.C. §1341 and §1343, require for a conviction that the accused must have acted as he did on the basis of a specific intent to defraud, United States v. Goss, 650 F.2d 1336, 1341 (5th Cir. 1981). Also see, United States v. Regent Office Supply, 421 F.2d 1174, 1180 (2d Cir. 1970).

It is here being contended that the evidence in the first instance fails to show the presence of any scheme to defraud. This follows because in our view, and hopefully in the Court's, advertising for clients and offering one's services to them as a financial broker does not translate into a scheme to defraud absent proof of an intent to cause harm. So postured, any argument that the efforts rendered by this petitioner were "reasonably calculated to deceive persons of ordinary prudence and

comprehension," Silverman v. United States, 213 F.2d 145 (5th Cir. 1954), simply fails to survive any meaningful scrutiny.

In making this contention we, of course, credit the fact that none of the people involved with Ellington were inexperienced businessmen. Indeed they were all shrewd businessmen who apparently believed, as did the accused, that he was performing a legitimate service and that he could and did assist them in getting the loans they sought. This point becomes even more cogent when it is realized that one cannot be held to guilty knowledge of the falsity of his statements simply because it is later determined they were false or some reasonable person would know they were false. See, United States v. Benjamin, 328 F.2d 854 (1964).

Even this is not all. One must factor into any meaningful evaluation of the representations made by Ellington that some sales "puffing" is always permitted in business transactions, particularly when the people deal at arms length -- the situation here. Indeed, there is surely a difference between mere "puffing" and the making of representations that can be sufficiently regarded as having been made in furtherance of a scheme to defraud. "Puffing," of course, cannot properly be regarded as anything other than the expression of an opinion, Scott v. United States, 263 F.2d 398, 402 (5th Cir. 1959), and is hardly the type of assertions of which frauds are made. See comment, Mail Fraud - Fraudulent Misrepresentations Must Be Distinguished From "Puffing" Or Sellers Talk In

Offenses under 18 U.S.C. §1341, 22 S. Car. L. R. 434 (1970).

The upshot of this point is that since any exaggerated sales talk, or pitch, on the basis of which Ellington sold himself to potential clients was not sufficient to deceive anybody with a reasonable amount of business sense, it can hardly be viewed as sufficient to carry the day for the Government on any element of the charged offense. Indeed, the absence here of any proof that the loan procedure employed by the petitioner had no potential for success makes it clear that to designate the effort itself a complete sham makes no sense at all.

A. The evidence failed to establish the existence of a scheme or artifice to defraud by means of false or

fraudulent pretenses and the like.

Distilled, what is here being contended (and clearly this point has been sorely missed by the jury and the framers of the indictment in this case) is that the making of false statements standing alone is insufficient to establish, either, a mail fraud or wire fraud violation. What is required, which clearly was not shown here, is proof of a recognizable scheme that was formed with the specific intent to defraud and the use of the mails in furtherance thereof.

A fair description of the scheme to defraud, charged in the indictment, is that Ellington and certain financial brokers to whom he variously referred clients, or discussed with clients, as being capable of funding their individual and separate financial projects were

actually incapable of doing so. And, they were in fact only interested in bilking people out of their application fees. Further, the charge was made that Ellington's representations as to his asserted proven ability to generate these loans were as wilfully false as was his representations as to the ability of those to whom the loan applications and other financial papers were ultimately submitted to finance any of the projects. (See Tr. 1019-1022).

B. The evidence failed to establish that the mails and the wires were used ir furtherance of a scheme to defraud.

When the question as to whether there was sufficient evidence to support a finding that the mail or the wires were resorted to in furtherance of a

fraudulent scheme, the answer hardly seems clear enough. Simply put, we also contend there is a patent lack of any causal connection between the use of the mails and the effectuation of any scheme. In making this argument we are persuaded that the essential elements of mail fraud and wire fraud are almost the same, United States v. Lemire, 720 F.2d 1327 (D.C. Cir. 1983), which makes the arguments made herein applicable to all counts.

ARGUMENT NO. II

The Intent To Defraud Instruction In This Mail And Wire Fraud Prosecution Was Constitutionally Insufficient To Properly Place Before The Jury The Good Faith Defense Raised By The Accused.

A critical aspect of the defense

made to these charges was that the accused acted at all times in good faith. The Court indeed recognized that "good faith" was a complete defense to the charges made in the indictment (Tr. 866) -- as it surely is. See Durland v. United States, 161 U.S. 306 (1896). Indeed, although expressly refusing to give the jury the good faith instruction submitted by the defense (Tr. 886), the trial court openly conceded "[T]here is enough evidence in the record to allow" the defense to "argue good faith" (ibid). However, as the Court saw it, the argument had to be made under the specific intent element of the charges made (ibid). All this we contend was pure error.

Our contentions in this regard finds formidable support in United States v. Goss, 650 F.2d 1336 (5th Cir. 1984),

which is analogous to the case here. In Goss, as in this case, the Court did instruct the jury "that a finding of a specific intent to defraud is required for conviction" of mail fraud (id., at 1345). What makes Goss so compelling is that it specifically rejected the position openly expressed by our trial Judge as the reason why the good faith instruction should not be given. Here we refer to Judge Rice's expressed view, which was an adoption of the prosecutor's argument, that "the issue was covered under the specific intent, the wilfulness aspect of the instruction" (Tr. 883). As put by the Court, while "[g]ood faith is a defense ... it, in effect, casts reasonable doubt upon essential elements" of the charges, and for that reason "it raises evidence to the level of an element" (ibid).

The bottom line, of course, is that the Court refused to give a good faith instruction because he was convinced it was unnecessary (id., 886).

In our view, a complete confutation of the trial court's position is provided by the following express holding in Goss:

> Charging the jury that a finding of specific intent to defraud is required for conviction, while it may generally constitute the negative instruction, i.e., that, if the defendants acted in good faith, they could not have had the specific intent to defraud required for conviction, does not direct the jury's attention to the defense of good faith with sufficient specificity to avoid reversible error.

Id., at 1345. Accord, Steiger v. United States, 373 F.2d 133 (10th Cir. 1967); Coleman v. United States, 167 F.2d 837 (5th Cir. 1948), and Hawley v. United States, 133 F.2d 966 (10th Cir. 1946).

Since the trial court's attention was specifically directed to the "good faith" issue in this case, the Court's obligation to give the instruction seems clear enough. Stated another way, the trial court under the facts here must truly be deemed to have committed reversible error by refusing to charge the jury on the issue of good faith. Goss, at 1344. Also see United States v. Sherer, 653 F.2d 334 (8th Cir. 1981). (Good faith is a complete defense to the charge of mail fraud and a defendant is entitled to such charge if there is evidence to support the theory.)

The failure of the Court to give the good faith charge is magnified by the idea that had it been given the Court would perforce have been required to emphasize that the burden was on the Government to prove beyond a reasonable

doubt the lack of good faith. Or, stated another way, the Government would have been charged with disproving good faith. See, United States v. Bronston, 658 F.2d 920 (2d Cir. 1981), where the Court recognized that a basic ingredient of the "good faith" defense is that the jury should be instructed, not only that good faith is a complete defense but "that the burden was on the Government to prove lack of good faith beyond a reasonable doubt" (658 F.2d, at 930).

The cogency of petitioner's arguments made above as to the prejudice by which he was victimized, in the wake of the Court's failure to specifically instruct on good faith defense, is further aggravated by still other circumstances. Here reference is being made to the Court's apparent thesis that counsel having been licensed by him "to

argue" good faith "to a fair-thee-well" (Tr. 886), somehow eliminated any need for an instruction to which he was entitled, and which trial counsel expressly viewed as being absolutely essential to the defense (Tr. 916-918).

For our part, it should go without saying (since it is beyond dispute) that it is always possible and proper for an accused in closing arguments to structure his analysis of the evidence in such a way that those instructions favorable to him will be emphasized. It is also beyond dispute that any argument made to the jury on a legal issue unsupported by an instruction to which the defendant is entitled "...constitutes an aggravation rather than a mitigation of the harmful effects of the court's refusal to instruct." United States v.

Phillips, 217 F.2d 435, 440 (7th Cir. 1954).

Stated another way, when viewed from the standpoint of this petitioner, the Court's failure to instruct the jury on good faith also deprived him of the right to have the imprimatur of the court put upon his theory of the case. The point here being, just as the indictment summarized, in a sense, the factual predicates upon which the prosecution relies to establish guilt, the defendant's theory of the case instruction, in this instance the good faith defense, rightly would have directed the jury's attention to the specific facts and issues upon which the defense was based.

Given the further fact that Ellington was also entitled absolutely to have the jury consider his good faith

theory of defense that found support in the law and the evidence, Blane, 375 F.2d, at 252, then it surely follows that the court's disinclination to do so had the unavoidable effect of diluting the petitioner's ability to prevail on the basis of his defense. See, Strauss v. United States, 376 F.2d 416, 419 (5th Cir. 1967).

ARGUMENT NO. III

In A Mail And Wire Fraud Prosecution The Given Instruction Must Make It Clear That The Existence Of A Scheme To Defraud Must Be Established Apart From Any False Or Fraudulent Representations.

The term "scheme or artifice to defraud," although originally coined by Congress, was not defined by them. Indeed, this point was specifically made

in Weiss v. United States, 122 F.2d 675, at 681 (5th Cir. 1941) and in United States v. Reid, 533 F.2d 1255, 1264 (D.C. Cir. 1976). It is this failure that has allowed the government to conjure up expansive interpretations, such as we have here. In this instance the effort made is to force even a routine business transaction under the mail and wire fraud statutes, when if any crime at all was involved, it should be handled on the local level.

Still, and this case really makes our point, a "scheme to defraud" certainly must entail something more than proof that a number of people spent, or loss, money in an effort to benefit themselves through business deals with the same individual. While it is true that a certain amount of trust was certainly involved in each of these

transactions, and it may very well be that an argument can be made that it was breached, it is surely the law that not every breach of trust results in a criminal fraud. See, United States v. George, 477 F.2d 508 (7th Cir. 1973). Also see Epstein v. United States, 174 F.2d 754, 766 (6th Cir. 1949).

All this being so, the criminalization of what happened here under the fraud statutes involved hardly seems defensible. See Hurson, Limiting The Federal Mail Statutes - A Legislative Approach, 20 Am. Crim. L. Rev. 423 (1983).

When what has been said above is focused on the Court's charge as to the requirements of a "scheme or artifice to defraud," it must surely be that the Court's charge failed in its purpose. Here we centralize the following segments

of the charge given by the Court:

> The words "scheme" and "artifice", as used in the mail and wire fraud statutes include any plan or course of action intended to deceive others, and to obtain, by false or fraudulent pretenses, representations, or promises, a substantive benefit, such as money or property, from the party so deceived.

(Tr. 1019.) In our view, the above instruction failed to inform the jury of what clearly appears to be the case -- that is, that a "scheme or artifice" must clearly be identifiable and exist apart from the acts supposedly committed in furtherance thereof. Stated another way, it is surely not the law that the mailing of a letter can become an act done in furtherance of a scheme if it develops that any one or more of the statements made in the course of an entire relationship turns out to be false. If this is a valid position then the

business practices utilized by our petitioner cannot logically be regarded as a scheme within the purview of the statutory proscriptions here involved.

This is so for the further reason that the various representations claimed to be false and fraudulent were not reasonably calculated to deceive even people of ordinary prudence and comprehension, Blachly v. United States, 380 F.2d 665, 671 (5th Cir. 1967).

The point here being contended for was well made in United States v. Regent Office Supply Co., 421 F.2d 1174 (2d Cir. 1970). Also see Horman v. United States, 116 F.2d 350 (6th Cir. 1902) and Harrison v. United States, 200 F.2d 662 (6th Cir. 1912).

So postured, since "scheme to defraud" within the contemplation of 18 U.S.C. §1341, can at least be likened to

a racketeering "enterprise" which has been defined as an amoeba-like infra-structure, United States v. Elliott, 571 F.2d 880, 898 (5th Cir. 1978), it follows that the given instructions on this element failed in its intended purpose. The purpose being referred to, of course, would have surely included defining what at best can be said to be a concept that is difficult to define. Here we refer to the entity or "scheme to defraud," which was said to be furthered by the use of the mails and wire. Compare United State v. Condolon, 600 F.2d 7 (4th Cir. 1979) which really makes our point.

CONCLUSION

If what the accused did in this case can be criminalized on the basis of the mail and wire fraud statutes, then it has to be that any business transaction in

which extravagant, or even the usual, sales pitches are given can be deemed a federal crime if for any reason it develops that the party making the representations cannot deliver on what he thought were reasonable assurances. Stated another way, can the routine sort of puffing that goes on in business transactions be converted by the mere use of the mails, or the wires, into a federal criminal offense.

Surely Congress never intended that the Government should become involved to the extent here shown in routine business transactions. If what this petitioner did was a crime, then his fate should have been dealt with by the State of Ohio in its courts rather than by the U.S.

Attorney in a Federal Court, where the law has to be strained as much as it was here.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition For Writ of Certiorari was mailed to Charles Fried, Solicitor General, United States Justice Department, Washington, D.C. 20530 and to Ann Marie Tracey, Assistant U.S. Attorney, U.S. Post Office and Courthouse Bldg., Cincinnati, Ohio 45202, this ___ day of November, 1985.

JAMES R. WILLIS, ESQ.
Attorney for Petitioner

APPENDIX

No. 84-3696
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,	:	
v.	:	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO
CHARLES LEONARD ELLINGTON, Defendant-Appellant,	:	

BEFORE: JONES, Circuit Judge, EDWARDS, Senior Circuit Judge; and SILER, District Judge.*

PER CURIAM. Appellant, Charles Ellington, appeals his conviction of thirteen counts of mail fraud in violation of 18 U.S.C. §1341, and one count of wire fraud in violation of 18 U.S.C. §1343. Appellant argues that the evidence was insufficient to support the

* The Honorable Eugene E. Siler, Jr., Chief Judge, United States District Court for the Eastern District of Kentucky, sitting by designation.

conviction, and that the instructions failed to put the theory of the defense before the jury. We affirm the judgment of the district court.

I

Appellant first contends that the evidence was insufficient to support the conviction because there was no evidence that he acted with intent to deceive or defraud. Viewing the evidence in the light most favorable to the government, United States v. Stone, 748 F.2d 361, 363 (6th Cir. 1984), it is clear that there was sufficient evidence upon which to base the conviction. The evidence showed that appellant went into business for himself and formed the company Unlimited Financing. He represented to clients that he had the ability to obtain large loans through the use of insurance guarantees and that he represented or had

special access to lenders who could fund large business ventures or construction projects. He also advised prospective clients that he had successfully closed numerous loans in the past. He assured them that, based on his track record and his analysis of their projects, he would be able to obtain funding for them. Appellant admitted at trial, however, that he had never successfully closed a loan using insurance guarantees.

Appellant contends that the evidence is not inconsistent with his defense that he acted in good faith. However, even if Ellington honestly believed in the ultimate success of his venture, that belief is not a defense to mail fraud. United States v. Stull, 743 F.2d 439, 446 (6th Cir. 1984), cert. denied, 105 S. Ct. 1779 (1985). In Stull the Court upheld mail fraud convictions where

misrepresentations included both promises to fund within short periods of time (30-45 days) and promises that 96% of the loan requests were funded, but where no loans were funded. Id. at 443. "'[N]o matter how firmly the defendant may believe in the plan, his belief will not justify baseless, false, or reckless representations or promises.'" 743 F.2d at 446 (quoting Sparrow v. United States, 402 F.2d 826, 828 (10th Cir. 1968). In sum, there is ample evidence from which the jury could find that Ellington intentionally devised a scheme to defraud his clients and that he used the mails and, in one instance, the wires to obtain funds from his clients.

II

Appellant next contends that the instruction regarding intent was insufficient to place the good faith

defense of the accused before the jury. Appellant had requested the following instruction:

> If the evidence in the case leaves you with a reasonable doubt as to whether the Defendant in good faith believed his statements to be true at the time he made them, then you must find the Defendant not guilty.

The district judge disallowed the instruction because he believed the defense related directly to the element of intent and that the instruction that the government must prove intent beyond a reasonable doubt was adequate to meet defendant's concern.

Appellant relies on United States v. Goss, 650 F.2d 1336, 1345 (5th Cir. 1981), to argue that the failure to give the good faith instruction was error. The government correctly notes that following the trial in this matter the Sixth Circuit addressed this question in

United Staets v. McGuire, 744 F.2d 1197, 1200-01 (6th Cir. 1984), cert. denied, 105 S. Ct. 1866 (1985), and rejected the position set forth by the Fifth Circuit in Goss. This Court held in McGuire that although the better practice is to give a good faith instruction, the failure to do so was harmless given the fact that the instructions with regard to specific intent expressly informed the jury of the defendant's theory of the case and properly placed the burden of proof of intent on the government. Id. at 1201-02. The instructions in the instant case advised the jury that the defendant's actions must be knowingly and intentionally done, without mistake, accident or an innocent reason and with a specific intent and bad purpose to violate the law. The court also instructed the jury that fraudulent

statements, if known to be untrue or made with reckless indifference to the truth, must be made with intent to deceive. The court further instructed the jury that it must find that the defendant acted with intent to defraud, that is, "to act knowingly and with the specific intent to deceive, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to oneself." The instructions did not, however, expressly inform the jury of the defendant's theory.

Nevertheless, we believe the error was harmless given the strength of the proof in this case regarding appellant's intent to deceive. Appellant only argued that his statements regarding his dealings with other brokers and his belief that he could obtain funding were in good faith. He admitted at trial that

he had never been successful in closing a loan using insurance guarantees and that the only lender he represented was in reality an agent of lenders. Consequently, the statements made regarding his past successes and his relationships with lenders were blatantly untrue and could not have been made in good faith. These representations were made to induce payment of a fee and constitute a sufficient basis by themselves for sustaining the mail and wire fraud convictions. Proof of any one or more of the fraudulent misrepresentations charged, made pursuant to the scheme to defraud, is adequate for conviction of violating 18 U.S.C. 1341. United States v. Toney, 598 F.2d 1349 (5th Cir.), cert. denied, 444 U.S. 1033 (1979); United States v. Halbert, 640 F.2d 1000 (9th Cir. 1981). In sum, the

court should have given the instruction, but the failure to do so without the benefit of Mcguire was harmless error.

Appellant also claims that the instructions failed to make it clear to the jury that the existence of a scheme to defraud must exist apart from the acts allegedly committed in furtherance of the alleged scheme. We decline to address this issue because of appellant's failure to preserve the issue by objecting to the instruction.

Accordingly, the judgment of the district court is AFFIRMED.

ISSUED AS MANDATE: September 25, 1985

COSTS: None

RELEVANT STATUTORY PROVISIONS

§1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, ... for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed,

any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

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§1343. Fraud by wire, radio, or television.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both.